E-FILED
Rachel Dombrowski, Clerk
Appellate Court of Maryland
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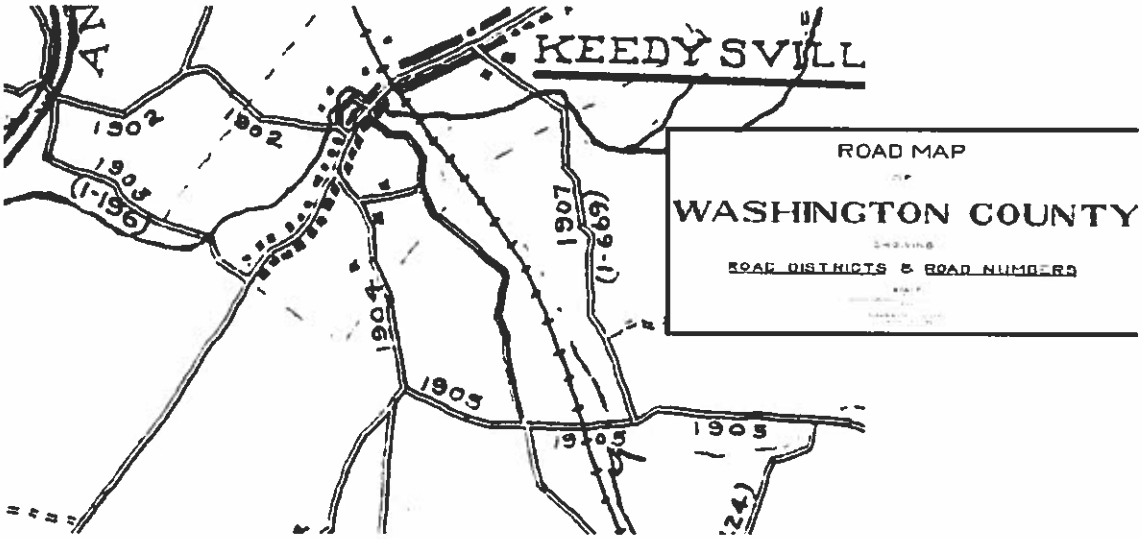
....Several old deeds refer to "the road to Hess's Mill" from the Eakle's Mill and Mount Briar area. This road from Gapland to DogStreet is assumed to be more or less the original path from Crampton's Gap towards the Antietam. It went straight across DogStreet on a now nearly lost track. Several old maps show this road directly opposite Mount Briar road's intersection with DogStreet. The road followed the west side of Little Antietam, just as Mount Hebron road follows the east side. The old road connected to Antietam Drive near its present dead end, formerly along the B & O rail road tracks. The following Map:



shows the road which leads from this one, and by Hess's mill to his bridge, [in red trace.] Evidence of this road is still visible today. This route fit's the pattern of following topography for the gentlest slopes and avoiding stream crossings were possible. In fact, this route parallels the course chosen by the 1868 B & O construction engineers in siting the rail road grade for minimal changes in elevation. This route would have been through Hess's land for much of its course from DogStreet. Why then wouldn't this be the route of the Conococheague road? This may be very generally, the course of the Indian road, the foot and bridle path from William Park's 1731 Park Hall. The petition to the Court in 1760 confirms it as a horse path at that date...

Young never rebutted Mr. Ellis' opinion throughout this litigation. The merits of this competent evidence were never decided by the trial court. (E1163-64)

D. The Public road right of way where Mr, Holder was working on May 29, 2020 is depicted on the 1936 Washington County Atlas of Public Roads.

"The Public 'Wagon Road' created by Section 12 of Chapter 334 of the Acts of Assembly of 1864 is depicted on the 1936 J.B. Ferguson Atlas revised 1937 of the Public Roads of Washington County that hangs in the Land Records Room in the Washington County Courthouse." (E1060) "The 1936 J.B. Ferguson Atlas, revised 1937, of the Public Roads of Washington County that hangs in the Land Records Room in the Washington County Courthouse ('1936 Atlas'), depicts the 'Road to Keedysville' crossing Dogstreet Road at a four-way intersection where Mt. Briar Road is located today, and running past or through the Remaining Lands, connecting to what is commonly referred to today as Antietam Drive, and terminating at the road known as Main Street in Keedysville." (E1068) "On July 8th, 2020 at 8:43 Am Defendant Justin Holder sent an email to Todd Moser, Washington County Real Property Administrator (Mr. Moser), County Survey Party Chief Garrett Culler (Mr. Culler) and Professional Land Surveyor George Nagel (Mr. Nagel)." (E1070) "The email started:

> You are correct. I attached the road atlas with page references. [Following] I was not asking the county to get involved in any civil property disputes, other than help identifying a county road and locating that specific road. [Explaining further] I highlighted the section of road I am working with on the [1936] road atlas and attached that to this email. I am working with a right of way that starts from the point in the highlighted section closest to the railroad tracks 'Cost Crossing ' south 30.75 degrees east 14 perches to a stone we found, than south 36 degrees east 10.6 perches, then down the cost keedy division line which was found, thence it follows keedys driveway to eakles mill rd. [Concluding] Mr. Moser would you please assist us in providing the document that describes the road I highlighted on the 1936 atlas and attached to this

> email. Please also confirm if it has been abandoned, or sold and the documents related to that. (*Id.*)

"Mr. Moser sent an email to Defendant Justin Holder, Mr. Culler and Mr. Nagel, on July 8th, 2020 at 9:48 Am." (E1071) "Mr. Moser was responding to an inquiry that included a screenshot of the '1936 Atlas' in which the 'Wagon Road' was highlighted:

> The County does not have a deed for the section of road you have highlighted. The absence of a deed does not indicate that is was or wasn't a County road. In fact we were unable to locate a deed for any portion of Mt. Briar Road. Our research did not find evidence of abandonment of any portion of Mt. Briar Road." (*Id.*)

"On October 11th, 2020 Defendant Justin Holder made a Public Information Request to Washington County Attorney B. Andrew Bright:

> Please provide the following public information and documents. All documents, evidence, pictures, photos, *acts in pais* notoriety, deeds, county road book description, surveys and drawings that shows 'Geeting Road, Dogstreet road, mt carmel church road, or reno monument road, as well as mt. Briar Road and trego road and ga[p]land road, and harpers ferry roads' or 'county road 19-06, 19-05. 19-04, 08-03, 0-09, 08-01 as shown in screenshot of 1936 atlas found on plats.net' is owned by the county and or that road has not been abandoned." (E1179)

"Washington County Attorney, B. Andrew Bright referred to the 'Wagon Road' as an 'ancient road and rights of way which extend across other properties in Keedysville, Maryland but are no longer in use' in an October 23rd, 2020 letter to the State of Maryland Public Information Act Compliance Board." (E1079) "On October 23rd, 2020 in a letter to the State of Maryland Public Information Act Compliance Board, Washington County Attorney B. Andrew Bright wrote:

> Mr. Holder protests that Washington County lacks a 'clear, concise and objective' catalog of records (and standards) as to whether roads that have long fallen into disuse are owned or have been abandoned by the County. [Protesting that] Obviously the County does not have a succinct tabulation of records of all 'evidence, pictures, photos, *acts in pais*' etc., showing ownership or abandonment of what may or may not be a public roadway. [Concluding,] Not coincidently , the road being investigated by Mr. Holder is the subject of several recent [sic] and/or litigations in which Mr. Holder is a party." (E1079-80)

"On November 21st, 2021 Washington County Attorney B. Andrew Bright replied to Defendant Justin Holder's October 11th, 2020 request stating *inter alia:*

> As you desire to have a simple answer as to the ownership of various roads, particularly the ones that have fallen into disuse. I can assure you that the County does not possess a simple record that yields an easy yes or no answer to your question. I can further assure you that if the County were to lay claim to such a simplistic answer, individual landowners affected would dispute and potentially litigate it, further disappointing you. As to your question or implication regarding "knowing or willful" denial, no such denial has occurred." (E1079)

"On July 9th, 2021 Defendant Justin Holder offered to purchase, by quit claim only, all the rights title and interest in the 'Wagon Road,' from Washington County Commissioners for $25,000 or more if requested." (E1080) "The Defendant included the cost of preparation of the deed in his offer." (E1080) "The offer to purchase the 'Wagon Road' mentioned that if the county has no rights title and interest in the 'Wagon Road,' it would be a $25,000 donation." (*Id.*) "On August 2nd, 2021 the County Commissioner declined the aforesaid offer to quit claim the 'Wagon Road.'" (*Id.*)

"On December 9th, 2020 in a letter to the Defendant in reply to a December 1st, 2020 correspondence, Washington County Attorney B. Andrew Bright wrote:

> You [Defendant Justin Holder] have made clear your request that the County either repair the roads you have identified or abandon any claim that it may have to them. To the best of my knowledge, the County has not decided what, if anything, to do with the roadways that you have identified. Our office is not in a position to commit the County to either of those options." (E1080)

Washington County Attorney B. Andrew Bright's December 9th, 2020 letter refers to the public road right of way depicted on the 1936 Atlas, and Mr. Holder incorporated that December 9th, 2020 letter into his May 22, 2022 Notice of Appeal related to what Mr. Holder alleged was a SLAPP suit by Young. *See infra*:

Dear Mr. Holder

Our office is in receipt of your email dated December 1, 2020 requesting certain information. Your request and the County's correlating response are set forth below.

> ". . . as of the time and day the county reads this email, and assuming the county has good title to all said roads(The title to all roads is in Land Records.) please explain the county's intent to abandon them. Using the screenshot of the 1936 atlas attached please answer repair or abandon for the following roads:
> 1. I-424 or 19-08 full length
> 2 i-268 full length
> 3. I-669 or 19-07 full length
> 4.19-06 from dog street road to main street."

You have made clear your request that the County either repair the roads you have identified or abandon any claim that it may have to them. To the best of my knowledge, the County has not decided what, if anything, to do with the roadways that you have identified. Our office is not in a position to commit the County to either of those options.

Sincerely,

B. Andrew Bright
Assistant County Attorney

E. <u>The Town of Keedysville named the Public road Harris lane in 1961.</u>

The record of the case contains verified testimony under oath relating to the existence of Harris Lane. "The Town designated a road Harris Lane ('Harris Lane') at the April 10th, 1961 Mayor and Council meeting when naming all of its streets, roads and alleys, and recorded the same in the Mayor and Council minutes." (E1069) "The Herald Mail published an article with the names of the streets and alleys of Keedysville annexed to the Mayor and Council minutes of April 10th, 1961." (E1080) "In that article, Harris Lane was described by the Town as running southeast from Main Street parallel to the railroad tracks, and the Herald Mail describes Harris Lane as keeping its traditional name." (E1069) "Plat 234, dated July 31, 1926, and recorded among the plat records of Washington County depicts a road with the name Harrise Street that terminates prior to connecting to Main Street and appears to continue on to lands described on deed L659 f580." (E1069) "Deed dated March 5th, 1962 from Robert Line and wife to Samuel Griffith and recorded at Liber 390 folio 604 among the Land Records of Washington County, Maryland; purports to begin at a stake on Harries Street and bind on Harries Alley." (E1069) "Deed dated July 28th, 1972 from E. Stafford Kline and wife to Michael D. Boyd and Wife recorded at Liber 545 folio 376 among the Land Records of Washington County purports that 'Parcel No. 2: Being all that part of ground situate on the Northern side of Antietam Drive (formerly known as Harries Street) in Keedysville, Washington County, Maryland…'" (E1069) "[T]he spelling of Harris Lane historically has varied as is typical with many historical names

in general." (*Id.*) "The Public road named Harris Lane that connects to the Northern Portion of the Remaining Lands, and that was traditionally named Harris Lane runs adjacent to and West towards the Town and through land claimed to be owned by the Town, generally located between the Morral property and the path commonly known today as Antietam Drive." (E1070) "The Town has acknowledged it has never abandoned or terminated any rights of the public to use Harris Lane or Antietam Drive." (E1095) "The Town of Keedysville minutes of the Mayor and Council for a March 2nd, 1962 meeting report: 'It was reported that the State standards for alleys and streets, wherein State revenue is used, will be 30 feet in width.'" (E1070) Harris Lane is an existing Public road of record.

F. Young's Parcel 2 is designated as a "local connector" road in the Town of Keedysville, Maryland's 1974 Comprehensive Plan, "Map 4."

"The Town of Keedysville 1974 Comprehensive Plan (1974 Comp Plan); was filed by Honorable Kenneth S. Ellis, Chairman of the Keedysville Planning Commission and received on March 7th, 1975 by Vaughn J. Baker, Clerk of Washington County Circuit Court. The '1974 Comp Plan' was 'financed in part through a comprehensive planning grant from the Department of Housing and Urban Development HUD Project Number P-1002, as administered by the Maryland Department of State Planning.'" (E1072) "The Plan was kept with the Land Records in the marriage room of the Washington County Courthouse." (E1072) "Map 4, annexed to the '1974 Comp Plan' after page 48, illustrates a local road in the area of 'Parcel 2'

of the Complaint." (*Id.*) Locals [Road] definition on page 45 of '1974 Comp Plan' as 'provide direct access to abutting properties and channel local traffic to collector streets.'" (*Id.*) "The aforesaid local connector road is illustrated as a lane connecting 'DogStreet Road' to the vicinity of the 'Wagon Road' as discussed by 'Mr. Moser' in aforesaid July 7th, 2020 email." (*Id.*) "Map 1 located after page 4 also illustrates the aforesaid road in the same area and purports to be adapted from United States Geological Survey Topographical Maps." (*Id.*) "Page 28 of the '1974 Comp Plan' under the heading 'Local Streets' states: 'Two other roads within Keedysville, both located in the western part of the Town, are relatively important for moving traffic; DogStreet and Keedysville Road. DogStreet provides access to the south, to Eakles Mills, Mt. Briar, and other small communities.'" (E1073) The 1974 Comp Plan Local road is in existence, and Young uses it as his driveway. (E1070)

G. The Town and/or County have never closed, abandoned, terminated or otherwise extinguished the Public road right of way where Mr. Holder was working on May 29, 2020, and Mr. Holder has the right to be there.

Shortly after the trial court issued final orders on September 7, 2022, Mr. Holder made a request for public information to the Town and County governments related to the "Road to Keedysville," as it is depicted on the 1936 Atlas, "Harris Lane" and the "1974 Comp Plan Local Road," (the "Public roads" of record). The Town and County responded that they did not have any records that the Public roads were closed, abandoned, terminated, or otherwise extinguished. (E1336-67) Young failed to rebut Mr. Holder's self authenticating evidence, and statements under oath.

H. Young had no justification to oppose Mr. Holder's defense Plat 2499 was not accurate, and Young knew he did not hold paper title to Parcel 3.

Mr. Holder incorporates Uncle Eddies' Statement of the Case section(s) A & E herein by reference. The Western Maryland Title Report, and Chris Joliet's letter told Young he did not have good legal title to Parcel 2 & 3. (E1332-35) Young paid $300 for a Quit Claim Deed from Jennifer Butts for Parcel 2 only. (E1498-1500) 27 years later Mr. Holder paid $500 for a Quit Claim Deed to Parcel 3, and other lands. (E1492) It is clear from the record that Young undoubtedly knew he should have asked to purchase Parcels 2 & 3, but unclear from the record why he did not.

Young was present for surveyor Frederick's deposition, wherein Frederick explained that the Stone monument Mr. Holder's surveyor located would be the proper monument for Parcel 1 to begin. (E1459-64) For unknown reasons Young refused to litigate the 25 foot wide Gap Mr. Holder's surveyor located, (E1102-3) and instead limited his claims to a 12.2 foot wide strip that Frederick drew on his Plat 2499. (E1020-28) Mr. Holder filed at least five (5) papers that would resolve the legal paper title, and simplify the proceeding in adverse possession. (E1130-31) Young opposed those papers procedurally, or for other improper reasons, but Young has never challenged the merits, or accuracy of Mr. Holder's surveyors description of the Gap.

I. Mr. Holder repeatedly requested Young join the Town and County so that the Public roads of record clouding the title(s) could be litigated, Young refused to do so, and those claims remain in accordance of RP § 14-619.

Mr. Holder filed three (3) papers requesting that Young join the Town and County to the claim to litigate the Public roads of record. (E1130-31) Young chose not

to clear those clouds for undisclosed reasons, and successfully argues he was not required to join those parties in this court. (*Id.*) In so doing, Young was equally successfully in allowing the claims of public road of record to continue to cloud the title of the properties he claims. *See* Md. Ann. Code RP § 14-619.

J. Young was impeached at trial, where he finally admitted that he did in fact <u>have knowledge of the Public roads of record that cloud his title.</u>

At trial Young testified that he did not have any knowledge that a road passed through the property he claims. (E80-86) Upon challenge by Mrs. Holder's counsel, Young admitted he did have knowledge of the road, and discussed it with Mr. Holder on, or about May 29, 2020. (*Id.*) Young had also admitted his knowledge of the "Road to Keedysville" in his January 12, 2022 deposition. (E1472-77) Young further admitted at trial that Mr. Holder had taken him to the "planted stone" property marker, where Young's legal title to Parcel 1 began, and Mr. Holder pointed to that "planted stone" marker to show Young. (E206) Young has not placed any evidence in the record to rebut the survey conducted by George Nagel, or the "planted stone," Mr. Nagel "found." Young will not argue this point on appeal, because Mr. Nagel is correct.

K. Mr. Holder asked Young during examination if he was asking the court to enjoin him from Public roads of record, Young's counsel explained that <u>Young was not asking for that, and the court agreed with Young.</u>

Mr. Holder asked Young and the court directly on the first day of trial if an injunction as to Public roads was at issue. (E87-89) Young's counsel and the court assured Mr. Holder that an injunction from Public roads was not being litigated, and Mr. Holder moved on. (*Id.*) Mr. Holder relied on the word of Young and the trial court.

L. This Court's Opinion vacated the trial court's declaration as to Parcel 1, and determined that the Town and County had no duty to appear at trial.

The trial court granted Young inappropriate relief to Parcel 1, and this court reversed the error. (E1016-19) The trial court opined that because the Town and County were involved in discovery, and did not join suit, the Town and County had abandoned any claim it has to the Public roads of records that exist, and pass through Parcel 2 & 3. (E1210) This court's opinion stated that Public roads of records are a legislative, not judicial, function of government. (E1163-64) The trial court ignored Justice Battaglia's mandate, and enjoined Appellants from Parcel 1 and public roads. (E1213 Appellants filed a timely notice of Appeal. (E1259-61)

QUESTIONS PRESENTED

A. Did the trial court err in law, or abuse its discretion when it disregarded the express mandate of this court to remove any mention/reference to Parcel 1, and the trial court continued to grant relief as to Parcel 1 anyway?

B. Did the trial court err in law, or abuse its discretion when Appellee conceded he was not asking this court to enjoin Appellants from public roads, and the court told Appellants it was not going to enjoin Appellants from public roads, and then the trial court enjoined Appellants from public roads anyway?

C. Was the priority of title by way of an easement by necessity to the property of Jennifer Butts able to be determined without hearing any evidence of where the

nearest public road to her property, that Mr. Holder has the right to visit, was located?

D. Does Appellee Young have the right to request, and the trial court have the authority to grant, an injunction that enjoins Appellants from the public roads, separate and apart from all other members of the public who still enjoy the right to use said public roads?

E. Was the trial judge legally correct that the Town and County failed to answer the suit and thereby terminated the public roads of record, or was this court legally correct in that the Town and County had no obligation to answer because public roads are a legislative function, and/or Appellee waived his claim in accordance with MD ANN. CODE REAL PROPERTY § 14-619?

STATEMENT OF FACTS

I. "In his Complaint, Mr. Young sought to quiet title by deed and/or by adverse possession, [to] real property located at 13 Dogstreet Road in Keedysville, Maryland, known as Parcels 2 and 3, as shown on Plat 2499" (E1125)

II. "Young sought a declaration that he was the sole owner of Parcels 2 and 3 and that no other person had any rights or interests in such property." (E1126)

III. "Young sought to enjoin the Holders from entering Parcels 2 and 3, as he alleged that Mr. Holder had entered the property on multiple occasions without permission." (E1126)

IV. In defense, "Mr. Holder claimed that he 'own[ed] the fee simple land claimed by Plaintiff, which land is also subject to a record-title right of way, public road, prescriptive easement, and an easement by implication.'" (E1128-29)

V. "Mr. Holder also 'specifically denie[d] the accuracy of plat [2499]' and 'denie[d] that the Plaintiff had made reasonable good faith efforts to locate' any interested parties." (E1128)

VI. "Young had purchased a quitclaim deed for Parcel 2 in 1993 from Jennifer Butts, owner of the property at the time upon which Stonecrest was built." (E1498-1500)

VII. "The trial judge found that Mr. Young had adversely possessed Parcel 3 for over 30 years; his findings were supported by the evidence." (E1171)

VIII. "At the pre-trial conference, the trial judge acknowledged the letter and issues Mr. Holder raised, including 'number four, whether there are claims or clouds that are out there regarding public roads on [Parcels 2 or 3].' The judge specifically explained that the existence of public roads was a 'legislative function' and that evidence of road usage was not going to be presented in the case." (E1163-64)

IX. "Parcel 1 was not a subject of the suit. In the Judge's Order, however, he granted relief not only to Parcels 2 and 3, but also as to Parcel 1, which was not appropriate because Parcel 1 was not a subject of the quiet title action." (E1168)

X. This court "remand[ed] the declaratory judgment for the trial judge to remove any reference to Parcel 1," (E1168) and "to revise its declaratory judgment by removing any mention of Parcel 1." (E1182)

XI. At trial, Mr. Holder's initial examination of Young sought to determine if Young was seeking to enjoin Appellant(s) from public roads, it was determined that he was not seeking such an injunction. (E87-89)

XII. The record of the case prior to the pre trial hearing contains substantial admissible evidence adduced under oath as to the existence of the "Road to Keedysville," (E1368-1430) "Harris lane," (E1069) and a "1974 Comp Plan Local Road," (E1072-80) the ("public roads" of record).

XIII. The Town of Keedysville, Maryland, (the "Town") and Washington County, Maryland, (the "County") have never closed, abandoned, terminated, or otherwise extinguished their rights in the "public roads" of record. (E1336-67)

LEGAL STANDARD(S) and ARGUMENT(S)

"Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a)

"In general, the denial of a motion to alter or amend a judgment or for reconsideration is reviewed by appellate courts for abuse of discretion." *RRC*

Northeast, LLC v. BAA Maryland, Inc., 413 Md. 638, 673, 994 A.2d 430, 451 (2010) (quoting *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 674-75, 944 A.2d 509, 514 (2008)). When reviewing a trial judge's discretionary rulings, "[the Appellate] Court has recognized that trial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature." *Id.* at 675, 944 A.2d at 515. *See also Aventis Pasteur, Inc. v. Skevofilax,* 396 Md. 405, 433, 914 A.2d 113, 130 (2007) (holding that "a failure to consider the proper legal standard in reaching a decision constitutes an abuse of discretion"); *Ehrlich v. Perez,* 394 Md. 691, 708, 908 A.2d 1220, 1230 (2006), citing *LeJeune v. Coin Acceptors, Inc.*, 381 Md. 288, 301, 849 A.2d 451, 459 (2004) and *Alston v. Alston,* 331 Md. 496, 504, 629 A.2d 70, 74 (1993) (stating that, "even with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards"). In summation, "[t]he relevance of an asserted legal error, of substantive law, procedural requirements, or fact-finding unsupported by substantial evidence, lies in whether there has been such an abuse." *Wilson-X,* 403 Md. at 675-76, 944 A.2d at 514.

I. THE TRIAL COURT'S INJUNCTIVE RELIEF AS TO 10.36 ACRES IS THIRTY TIMES BROADER THAN YOUNG'S .36 ACRE OF ROAD-BED, THAT HE PLACED AT ISSUE IN HIS SUIT.

Mr. Holder incorporates section(s) I & II of Uncle Eddies' brief as if fully stated herein by reference. This court previously determined that Young inappropriately sought, and the trial court inappropriately granted relief to Parcel 1, when only Parcel 2 and 3 were the subject of the suit. (E1016-19) The trial judge does not have

discretion to ignore this court's mandate, and therefore it abused its discretion in granting Young any relief whatsoever as to Parcel 1, and enjoining the Appellant(s) from Parcel 1, in its revised order. (E1213) Young is not entitled to this relief. (E1168)

"It is well established that an injunctive decree must not be broader than the issue raised by the pleadings." *Rocks v. Brosius*, 241 Md. 612, 649, 217 A.2d 531 (1966).(Quoting *Chesapeake etc. R.R. Co. v. Richfield Oil Corp.,* 180 Md. 192, 23 A.2d 677 (1942), cert. den., 316 U.S. 698, 62 S.Ct. 1297, 86 L.Ed. 1768 (1942)).

Young's pleadings did not request relief outside Parcel 2 & 3 or Public roads of record, (E1020-28) and therefore Young is not entitled to enjoin Appellant(s) from land outside Parcel 2 & 3 or Public roads of record. Young will not argue otherwise.

This court's May 26, 2023 Opinion discussed closing Public roads over Parcel 2 & 3,[3] and "such a determination is a legislative, rather than a judicial, function." (E1163) Which is inconsistent with the trial courts Opinion that the Town and/or County extinguished the Public roads by not appearing at trial. (E1210) Indeed, the trial court acknowledged that Young's pleading unintentionally may have placed the County roads at issue, (E87-89) and accepted Young's concession that he was not asking the court to enjoin Appellant(s) from the County road. (*Id.*) Despite repeated demand from Mr. Holder that Young join the Public roads to his suit, Young declined

[3] Immediately after the trial courts September 7, 2022 Opinion and Order the Town and County confirmed in writing to Mr. Holder the public roads at issue have not been closed, abandoned, terminated or otherwise extinguished. Mr. Holder has proven the roads exist, so he does not need to request the road opened, as they are in use.

to do so. (E1100-01) Young has no justification to argue that he is requesting Appellant(s) be enjoined from the Public roads in this Appeal, because Young waived that right below. (E87-89)

The trial court can not grant Young relief outside his pleadings, and this court mandated Judge Wilkinson to vacate relief outside Parcel 2 & 3. In *Maddox v. Maddox,* 174 Md. 470, 474, 199 A. 507 (1938), Judge Parke commented for the Court, "A refusal to obey the order of the court, or a satisfactorily proved subtle defeat of its mandate, is a contempt." It must be borne in mind that, as Judge Hammond put it for the Court in *Sheets v. City of Hagerstown,* "A contempt was, at common law, and now is, an offense against the court as an organ of justice." 204 Md. 113, 118, 102 A.2d 734 (1954). Judge Wilkinson can not just ignore Justice Battaglia's mandate, and do the opposite, especially when Young never even requested relief outside Parcel 2 & 3.

II. YOUNG HAS NO GOOD FAITH EXPLANATION AS TO WHY HE LIMITED HIS RELIEF TO JUST A 12.2 FOOT WIDE PARCEL 3, OR WHY HE ONLY PURCHASED A QUIT CLAIM DEED FOR PARCEL 2 IN 1993, BUT YOUNG MUST SUFFER FROM HIS OWN IGNORANCE.

There is no dispute in the record that in 1988 Young was advised that his predecessor Wickline could not transfer good title to Parcel 2 & 3. (E172 & 207-9) Young's deed tells him this by the affidavit related to adverse use of Parcel 2, (E1293) and his Plat shows a Deed Overlap area there. (E1295) It is unclear why Young chose to limit his Quit claim deed, his agent prepared, to just Parcel 2, but that is precisely what he did in 1993. (E1498-1500)

Young knew he was trespassing if he went on Parcel 3, (E1332-35) and therefore he knew one day he would have to perfect his claim to right in court. (*Id.*) Mr. Holder notoriously alleged below that Young was limiting his claim of adverse possession to just the 12.2 foot wide Parcel 3 drawn on Plat No. 2499. (E1120-28)

Just as he did in 1988-1993, Young ignored all of the clear warnings Mr. Holder provided him throughout the litigation. (E1042-99) Mr. Young, Parcel 1 begins right here at this "planted stone" I showed you. (E207) Mr. Young, the Gap of land between the "planted stone" and the Stonecrest' line is 25 foot wide. (E1495) Mr. Young, Plat No. 2499 is not accurate, (E1029-41) and the man who drew it has admitted he made a mistake. (E1461-62) Mr. Young, the fence line does not follow the title line. (E1295)

In Oral arguments for Appeal No. 1145 & 1457, September term 2022, Judge Kehoe explained that it was ok for Young to "structure the relief he sought" to just the 12.2 foot wide parcel 3; and Justice Battaglia explained "Parcel 1 never was an issue in this case."[4] Mr. Holder incorporates his same successful oral arguments to this court in rebuttal to Young on May 3, 2023 herein by reference. Young, possibly by his own ignorance, but more likely than not, willfully and intentionally, limited his relief to a 12.2 foot wide Parcel 3. Waiver is "intentional relinquishment of a known right." *Gould v. Transamerican*, 224 Md. 285, 294, 167 A.2d 905, 909 (1961) Young must suffer from his own ignorance and error, not Mr. Holder who properly gave notice.

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[4] *See* https://www.mdcourts.gov/sites/default/files/import/cosappeals/media/20230503_1145.mp4 at time stamp 38:50-44:15. (May 3, 2023 Oral Argument)

The trial court simply lacks jurisdiction to enjoin Mr. Holder from any other place than Parcel 2 & 3 on Plat No. 2499, and only to the extent those Parcel(s) are not encumbered by a public road, *see* section III *infra.*

III. YOUNG WAIVED HIS RIGHT TO LITIGATE PUBLIC ROADS FOR ALL THE SAME REASONS HE WAIVED RELIEF OUTSIDE PARCEL 2 & 3.

When the dispute arose on, or about May 29, 2020, Young knew Mr. Holder was claiming the rights of the public to travel over Parcel 2 & 3. (E1029-41) Mr. Holder adduced substantial evidence that the title of Parcel 2 & 3 are clouded by Public roads of record. (E1345-1477) It is undisputed that those Public roads of record have not been closed, abandoned, terminated, or otherwise extinguished by the Town and/or County government. (*Id.*) Young has placed no evidence in the record to rebut the existence of the Public roads of record. Despite multiple request, Young utterly refused to join those claims, so the parties can have complete relief, (E1100-01)

Young will not argue that the Town and/or County had any duty to appear and avail themselves of the Public roads of record that cloud Parcel 2 & 3, because that would be contrary to the law in MD ANN. CODE REAL PROPERTY § 14-619.

Waiver is the intentional relinquishment of a known right. *In re Blessen H.,* 392 Md. 684, 698, 898 A.2d 980, 988 (2006); *Myers v. Kayhoe,* 391 Md. 188, 205, 892 A.2d 520, 530 (2006). Waiver rests upon the intention of the party, *Gould v. Transamerican Assocs.,* 224 Md. 285, 295, 167 A.2d 905, 909 (1961), and therefore, acts relied upon as constituting waiver must unequivocally demonstrate that waiver is intended. *Myers,* 391 Md. at 205, 892 A.2d at 530-31; *Gold Coast Mall, Inc. v. Larmar*

Corp., 298 Md. 96, 109, 468 A.2d 91, 98 (1983). The right or advantage waived must be known; "[t]he general rule is that there can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights, and of facts which will enable him to take effectual action for the enforcement of such rights." *Armour Fertilizer Works v. Brown,* 185 Md. 273, 278-79, 44 A.2d 753, 755 (1945).

Young was the master of his own destiny. Young had full knowledge by way of Mr. Holder's *verified* pleadings, (E1029-99) expert report, (E1369-1430) and substantial evidence (E1336-67) of the Public roads of record. Young deliberately chose not to join the Public roads of records, nor he did not protest when the trial judge removed litigation of those clouds on Parcel 2 & 3 from this litigation. (E1163-64) When Mr. Holder challenged Young at trial to explain what right Young had to enjoin him from the Public roads, Young acquiesced, and declined to seek that relief. (E87-89) Young's waiver of his right to enjoin Appellants from Parcel 2 & 3 in the areas they are clouded by Public roads of record was unequivocal. Young waived his right to an injunction which enjoins Appellants from land outside Parcel 2 & 3 or the Public roads of record.

Additionally, the trial judge told Mr. Holder he would not be enjoined from public roads, (E87-89) and those public roads would be litigated in the *Holder v Morral* action. (E92) Mr. Holder objected, but moved on in reliance of the trial judges representations. It would be patently unfair to rule that because Mr. Holder relied on the good word of the trial judge, he is now enjoined from public roads he was barred

from litigating. Young knew on May 29, 2020, when this dispute started, it was over the public roads, he knew existed, and did nothing to close. (E80-86 & 1475)

IV. YOUNG SHOULD HAVE USED HIS RESOURCES TO PETITION THE LEGISLATURE TO CLOSE THE PUBLIC ROADS, NOT THIS COURT.

Young chose not to request relief outside Parcel 2 & 3, and he chose not to join the clouds of public roads on his title. (E1020-28) This court has decided that public roads are a legislative function of government, (E1163-64) and Young should have spent his resources petitioning the local government to close the roads, or otherwise extinguish them if he wants his injunction. (*Id.*) Young should suffer from his own error, not Mr. Holder. Mr. Holder was correct, Young filed a SLAPP suit. (E1155-59)

The trial court did not allow parties to be heard, (E1163-64) determine the merits of the injunction, (E1210) or issue an order contained entirely in a single document that is specific. (E1213) "Since the appellants are entitled to use the public highway…the question whether there is a lane on the appellants' property which might be used for this purpose is immaterial." *Stottlemyer v. Crampton*, 235 Md. 138, 145, 200 A.2d 644 (1964). "We therefore hold that the appellees have failed to show that the appellants' actions were sufficient to constitute a nuisance which would be the proper subject of injunctive relief. Thus the decree will be reversed." *Id.* Therefore, without making a determination as to the merits of the public roads, Young can not demonstrate that Mr. Holder's actions are unlawful, and he can not meet his burden to be afforded the injunction. More likely than not, Mr. Holder followed the western edge of Parcel 1 in the bobcat on May 29, 2020, which is not even Young's property, (E99)

It is indisputably lawful for Mr. Holder to remove roadside trees in the public right of way. of an unimproved road *See* Md. Code Ann. Natural Resources § 5-406(b)(2).

V. THE INJUNCTION SHOULD BE DISSOLVED IN ITS ENTIRETY

This court should dissolve the injunction in its entirety, because it could not be properly determined and fully, or fairly litigated, without the trial court hearing evidence of public roads. (E1163-64) Mr. Holder, enjoys the same right as any other member of the public, to use the Public road right of way that has not been closed, abandoned, terminated or otherwise extinguished by the Town and/or County. (E1136-67)

At minimum, this court must vacate the trial court's revised order where it enjoins Appellants from Young's "land as described in the Opinion and this Order," and replace the term with "Parcel 2 and 3 as depicted on Plat 2499, whereas the western boundary of Parcel 3 adjoins the eastern boundary of Stonecrest as depicted on Plat 8292, except those parts of Parcel 2 and 3 that are subject to Public roads and ways of record, which were not the subject of this suit."

The minimum order would leave this dispute as it was on May 29, 2020, where Mr. Holder asserts his right as a member of the public, and Young asks the Court to hold Mr. Holder in contempt. A party enjoined may not violate the terms of an injunction and then attack the injunction collaterally in a contempt proceeding, civil or criminal. *Save-Mor Drugs v. Upjohn Co.,* 225 Md. 187, 190, 194, 170 A.2d 223 (1961). Only a complete lack of jurisdiction in the court to grant the injunction and not

merely error in granting it could avail a party. *Id.* at 190. Young is free to refile his request, once he successfully petitions the local government to close the public roads Mr. Holder enjoys the use thereof. Mr. Holder moves to dissolve the injunction.

VI. ALTERNATIVELY, ANY AMBIGUITY, IF IT EXIST, LIES IN THE TRIAL COURT'S "NOTE ON PUBLIC ROADS"

The trial court decided to bar all evidence of public roads at trial. (E1163-64) The trial court recognized that it could not enjoin Mr. Holder from the public roads, unless it found they were extinguished. (E87-89) Indeed, the "Note on Public Roads" follows the trial court's opinion discussing the injunction. (E1210)

The trial court decided that because the local government did not appear and avail themselves of the claims of record, it lost its rights to assert them. (E1210) This finding was inconsistent with Maryland law, (RP § 14-619) unsupported by any credible evidence in the record, and flat out rejected by this court. (E1163-64)

However, without a clear mandate from this court regarding injunction, and the "Note on Public Roads," Uncle Eddies is correct, this suit gives rise to an action for inverse condemnation or equal protection, *see* Uncle Eddies Br. Section III.

For clarity, this court should mandate the trial court's opinion reflects that public roads are a legislative function of government. Young should petition the local government to terminate its rights in the public roads that cloud the title of Parcel 2 & 3, prior to making a request for injunction in the future.[5]

[5] It would be directly contrary to the equal protection clause of the state and federal constitution to allow Young to willfully exclude these claims of public roads that cloud his title, and then enjoin Mr. Holder from the public roads anyway.

VII. THE TRIAL COURT'S INJUNCTION IS IMPROPER BECAUSE AN INJUNCTION MUST BE SPECIFIC AND NOT REFERENCE THE COMPLAINT, OR ANOTHER DOCUMENT.

Md. Rule 15-502(e) provides that an injunction must (2) "be specific in terms, and" (3) describe "not by reference to the complaint or other document, the act sought to be mandated or prohibited." Young's injunction references the "land as described in this court's opinion," which said opinion describes Young's land as "Parcel 1, 2 and 3." (E1185) The Appellate Court's remand mandates the trial court to "remove any mention/reference of Parcel 1 from its declaratory judgement." (E1016-19 & 1168)

The Appellate Court affirmed that public roads were not litigated and the declaratory judgement did not terminate those public roads on Young's claimed property. (E1163-64) Therefore, the Public roads of record claimed by Mr. Holder over the land claimed by Young were not litigated, and the trial court's opinion tends to terminate those rights. (E1210) Young's land as described in the trial courts opinion would enjoin Mr. Holder from Parcel 1, 2 & 3, as well as the Public roads of record that pass through those lands. This court has determined that Young was only entitled to relief as to Parcels 2 & 3, and the Public roads of record were not litigated.

The trial court's reference to another document in its injunction order, and any ambiguity created by the difference between the trial court's and this court's opinion, are inconsistent with Maryland caselaw, and Md. Rule 15-502(e). Public roads were not litigated, and Mr. Holder placed substantive evidence in the record of the Public roads of record.

An injunction is "a writ framed according to the circumstances of the case commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience. Thus, injunctive relief is a preventative and protective remedy, aimed at future acts, and is not intended to redress past wrongs." *El Bey v. Moorish Science Temple of America,* 362 Md. 339, 353 (2001) (quoting *Maryland Commission on Human Relations v. Downey Communications*, 110 Md. App. 493, 515 (1996)). The now supreme court explained in *Harford County Educ. Assn v. Board of Ed. of Harford County:*

> Where the terms of an injunction are not specific and definite, a defendant will not be punished for contempt. *Rocks v. Brosius,* 241 Md. 612, 648, 217 A.2d 531 (1966); and *Wells v. Osborne,* 204 Md. 375, 379, 104 A.2d 599 (1954). An injunction must be sufficiently specific to give a defendant a fair guide as to that expected of him. *Pocketbook Workers v. Orlove,* 158 Md. 496, 511, 148 A. 826 (1930).,

281 Md. 574, 587 (1977). How could Mr. Holder be punished for enjoying his right as a member of the public to walk on the public road?

The Appellate court found that Young stated a claim for Parcel 2 and 3 only, and any mention or reference to Parcel 1 was to be removed, because relief as to Parcel 1 was inappropriate. The trial court's continued abuse of discretion in granting Young inappropriate relief as to Parcel 1, in disobedience of this court's May 26, 2023 Order must be reversed. The trial court's injunction must be specifically written on one document, and not be reference to its opinion.

CONCLUSION

In 1988 Young was on notice that he needed to purchase a quit claim for any land outside the title of his predecessor's Parcel 1, if he wanted clear title to the land as it was depicted on Plat No. 2499. (E1332-35) Young purchased a quit claim deed in 1993 for Parcel 2 only. (E1498-1500)

Young was on notice in this instant litigation he needed to request relief for all land outside the title of his predecessor's Parcel 1, if he wanted clear title to the land as it was depicted on Plat No. 2499. (E1029-99) Young chose to waive that relief, and limit his adverse possession to a 12.2 foot wide Parcel 3. (E1020-28)

Young knew from the beginning of this dispute, (and decades prior to this dispute) (E80-86) that claims of public roads in the public record, cloud the title of Parcel 2 and 3. (E1475) Young chose to exclude those claims of public roads of record from the relief he sought. (E87-89)

This court should stricken the trial courts opinion from the record, and dissolve the injunction. Young's success is limited to adverse possession of Parcel 3.

Alternatively, this court should remand to the trial court with orders to revise its order enjoining Appellants from "land described in the Opinion" to an order enjoining Appellants from "Parcels 2 and 3 as depicted on Plat 2499, excluding those areas subject to any colorable claims as to public rights of record." To be frank, this Appellant would continue to traverse Parcel 2 and 3 at his leisure, with such an order, until Young successfully petitions the local government to close the public roads.

CITATIONS AND TEXT OF PERTINENT STATUTE AND RULES

A. Rule 8 - 131 - Scope of Review

(a) Generally. The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by an trial court. Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

B. Rule 15-502 - Injunctions-General Provisions

(e) Form and Scope. The reasons for issuance or denial of an injunction shall be stated in writing or on the record. An order granting an injunction shall (1) be in writing (2) be specific in terms, and (3) describe in reasonable detail, and not by reference to the complaint or other document, the act sought to be mandated or prohibited.

(f) Modification or Dissolution. A party or any person affected by a preliminary or a final injunction may move for modification or dissolution of an injunction.

C. MD. Real Property Code Ann. § 14-619:

(a) A judgment in an action under this subtitle does not affect a claim in the property or part of the property of any person who was not a party to the action, if, at the time the action was commenced:

(1) The claim was of record; or

(2) The claim was actually known to the plaintiff or would have been reasonably apparent from an inspection of the property.

(b) This section may not be construed to impair the rights of a bona fide purchaser or encumbrancer for value dealing with the plaintiff or the plaintiff's successors in interest.

D. MD. Natural Resources Code Ann. § 5-406:

(b)(2) A tree may be cut down and removed by an abutting landowner for the landowner's own use without first obtaining a permit if the tree is standing within the right–of–way of a public road which has not been surfaced with either stone, shell, gravel, concrete, brick, asphalt, or other improved surface.

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 8000 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112; Font Times New Roman size Thirteen (13) Point.

_____

Justin K. Holder, *Pro Se*

CERTIFICATE OF FILING AND SEVICE

I HEREBY CERTIFY that on this 23rd day of October, 2023, the foregoing Appellant Brief and Record Extract was served via the MDEC system on parties of record, 8 copies of the Appellant Brief and Record Extract were mailed via first class US mail to the Appellate Court of Maryland and 2 copies were mailed via first class US mail to the following counsel and/or parties:

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IN THE APPELLATE COURT OF MARYLAND

September Term 2023
No. 883

UNCLE EDDIES BROKEDOWN PALACE, LLC

Appellant

v.

JEFFREY YOUNG

Appellee

Appeal from the Circuit Court of Washington County (C-21-CV-20-371)
The Honorable Andrew F. Wilkinson presiding

BRIEF OF APPELLEE JEFFREY YOUNG IN RESPONSE TO BRIEF OF UNCLE EDDIE'S BROKEDOWN PALACE, LLC

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EXHIBIT C

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STATEMENT OF THE CASE

Appellee incorporates the statement of the case section from his response to the Brief filed by Justin Holder (hereinafter referred to as the "Holder Br.") as if set forth herein.

QUESTIONS PRESENTED

Appellee incorporates the standard of review section from his response to the Holder Brief as if set forth herein.

STATEMENT OF FACTS

Appellee incorporates the Statement of Fact section from his response to the Holder Brief as if set forth herein.

STANDARD OF REVIEW

Appellee incorporates the standard of review section from his response to the Holder Brief as if set forth herein.

ARGUMENTS

A. Any Ambiguity in the Trial Court's Revised Order is Easily Corrected.

The only conceivable issue properly presented by this appeal is extremely narrow, i.e. whether the trial court sufficiently removed the reference to Parcel 1 from its declaratory judgment to satisfy this court's mandate. Since Mr. Young (in his Complaint) only asked the trial court to grant relief as to his Parcels 2 and 3, this Court (in the last appeal) held that it was erroneous for the trial court to quiet title to Parcel 1 and/or to enjoin any of the Defendants from accessing Parcel 1 in its original final order.

E1168. Accordingly, this Court remanded to the trial court for a limited purpose, i.e. to revise its judgment in order to rescind any relief as to Parcel 1. E1018 (also remanding for proceedings to award attorneys' fees to Appellees for bad faith litigation by Ms. Holder on the last appeal).

The trial court, in fact, complied with this Court's instructions by removing all references to Parcel 1 from its final order and many of the references from its opinion. With respect to the opinion, however, the trial court did not remove every reference to Parcel 1. For example, when describing the property contained in Mr. Young's deed, the court identified all 3 Parcels contained therein, including a reference to Parcel 1. E1185 (stating briefly that "Parcel 1 is a +/-10-acre tract of land improved with a home, accessory building, and a panhandle driveway extending towards, but not intersecting with, Dogstreet Road"). Furthermore, when finding that Mr. Young established adverse possession as to Parcel 3, it made brief, passing references to Mr. Young's use of Parcels 1 and 2 also. E1186, 1194.

Despite these references to Parcel 1 in the revised opinion, the Court was careful to explain that the relief granted by it only extended to Parcels 1 and 2 and not to Parcel 3. At the beginning of its revised opinion, the trial court interjected the following disclaimer:

> This court issued an Opinion and related Orders dated September 6, 2022. Following appeal and consistent with the directive of the Appellate Court of Maryland on remand in consolidated cases CSA-REG-l 145/1147-2022, this Court's Opinion is updated to remove conclusions about Plaintiff's Parcel 1 from its declaratory judgment.

E1183. In its order, denying Mr. Holder's motion to alter or amend, the trial court explained that these references to Parcel 1 were only explanatory in nature and were not intended to provide any relief as to Parcel 1. App. 3.

Despite the modifications and explanation thereof by the Court, Appellants argue that there is still an ambiguity with the following language contained in the Court's order as revised:

> ORDERED, Defendants Justin Holder, Deena Holder, Uncle Eddie's Brokedown Palace, LLC, and any member or agent thereof, be and are hereby permanently enjoined from entering Plaintiffs land as described in the Opinion and this Order.

E1213. Since the trial court's revised opinion still makes passing reference to Parcel 1, Appellants argues that the injunctive relief in the order arguably extends to all 3 parcels of the Young Property, including Parcel 1.

Mr. Holder's interpretation of the revised order is a stretch. Although the trial court left three references to Parcel 1 in its revised opinion, it clearly limited the scope of its relief to Parcels 2 and 3. See E1183 (prefacing the order with a disclaimer that it was extending no relief to Parcel 1; and explicitly stating that the relief only extended to Parcel 2 and 3; see also E1201 (quieting title only as to Parcels 2 and 3 and removing reference to Parcel 1). Accordingly, a reasonable person reading the revised Order and Opinion could only interpret the injunctive relief as extending to Parcels 2 and 3 despite a few passing references to Parcel 1 in the Opinion for context.

Even if there was an ambiguity in the revised order when interpreted in conjunction with the Opinion, the solution is simple. The Court should remand this case

again with instructions to expressly limit the injunction in the final paragraph of the revised order to Parcels 2 and 3, e.g. by making the following simple change (added language in brackets and stricken language deleted):

> ORDERED, Defendants Justin Holder, Deena Holder, Uncle Eddie's Brokedown Palace, LLC, and any member or agent thereof, be and are hereby permanently enjoined from entering Plaintiffs [Parcel 2 and 3] ~~land~~ as described in the Opinion and this Order.

E1213.

Since the fix to Mr. Holder's concerns is simple, it begs the question: why did Mr. Holder and UEBP submit 60 pages of briefs to accomplish such a minor change to the order? The answer to that question is simple. Appellants are trying to confuse this Court into reopening this case on a much wider scale; specifically, appellants not only want the injunction removed as to Parcel 1 but they also want this Court to rescind the injunction as to Parcels 2 and 3. Since the injunction as to Parcel 2 and 3 was affirmed in its entirety by this Court in the last appeal, Appellants' efforts to relitigate their rights to Parcels 2 and 3 are in bad faith.

B. Mr. Holder's and UEBP's Appeal is In Bad Faith

In their briefs, Appellants attempt to relitigate issues that were resolved against them in the previous appellate opinion. Although they make a cursory challenge to the post-remand order of the trial court, arguing that it violated this Court's mandate, Appellants direct the majority of their argument to challenging decisions explicitly resolved in this Court's last Opinion. Specifically, Mr. Holder makes a full frontal

assault on the injunctive relief prohibiting them from accessing Parcels 2 and 3 of the Young Property:

> When the dispute arose on, or about May 29, 2020, Young knew Mr. Holder was claiming the right of the public to travel on Parcel 2 & 3. Mr. Holder adduced substantial evidence that the title of Parcel 2 & 3 are clouded by Public roads of record. It is undisputed that those Public roads of record have not been closed, abandoned, terminated, or otherwise extinguished by the Town and/or County government. Young has placed no evidence in the record to rebut the existence of the Public roads of record. Despite multiple request, Young utterly refused to join those claims, so the parties can have complete relief.

Holder Br. at 22-24.[1]

Appellants' argument that the trial court erroneously enjoined them from crossing Parcels 2 and 3, because those parcels are burdened by a public road, is directly

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[1] UEBP makes a similar argument:

> The Appellate Court affirmed that public roads were not litigated because they were a legislative function of government. Therefore the declaratory judgment consistent with the court's opinion could not terminate the 'public roads' of record that pass over Young's Parcel 2 and/or 3 on Plat 2499. Indeed, Young had substantial notice of Appellant(s) evidence of those "public roads,' and that the government had never closed, abandoned, terminated or extinguished its rights therein [sic] those "public roads." (E1345-67). Young chose not to litigate the claims of "public roads" of record that were actually known to him. In so declining, Young cannot possibly meet his burden to exclude Appellants(s) and/or their invitees from using those "public roads" of record actually known to him by evidencing a continued trespass.

UEBP Brief at 18.

contradicted by the law of the case. Pursuant to the law of the case doctrine, an appellant is precluded from relitigating an issue on a second appeal that was decided in an earlier appeal in the same case. Baltimore Cnty. v. Fraternal Ord. of Police, Baltimore Cnty. Lodge No. 4, 449 Md. 713, 730, 144 A.3d 1213, 1223–24 (2016). "The purpose of this doctrine is to avoid piecemeal litigation—that is, to prevent litigants from prosecuting successive appeals in a case that raises the same questions that were decided in a prior appeal". Id. at 730, 144 A.3d at 1224. There are three exceptions to this doctrine: (1) the evidence in a subsequent trial is substantially different from what was before the court in the initial appeal; (2) a controlling authority has made a contrary decision in the interim on the law applicable to the particular issue; or (3) the original decision was clearly erroneous and adherence to it would work a manifest injustice. Id.

Here, the law of the case doctrine is directly implicated by Appellant's request to rescind the injunction not only as to Parcel 1 but also to Parcels 2 and 3. Before the first trial, Appellants argued extensively that they could not be enjoined from crossing Parcels 2 and 3 of the Young Property because those parcels were somehow burdened by one or more public roads. The trial court, however, precluded Mr. Holder from presenting evidence of any public roads at trial, holding that Mr. Holder's claims were "without merit".[2] E1210. Appellants then challenged the Court's decision directly in the first

[2] Mr. Holder suggests that by directing Mr. Holder to address his claims about a public road with the legislature, the trial court necessarily abstained from making any decision about a public road. Holder Br. at 24, 27; UEBP Br. at 17-18. The trial court, however, clearly resolved Mr. Holder's public road claim against him by finding it to be "without merit" Opinion. By renewing his claim to a public road in this appeal, and arguing that

Appeal. App 2 at 24-25 (challenging trial court's exclusion of evidence concerning public roads); id. at 26, 29-30 (arguing that Mr. Young's adverse possession of a public road violated the public trust); App. 95-101 (arguing that Mr. Young's driveway was a public road). This Court, however, rejected Appellants' arguments, holding that the trial court "did not err" when it dismissed Appellants' claims to a public road. E1163-1165. Appellants' attempt to relitigate the same issue in this appeal is a patent violation of the law of the case doctrine.

Appellants cannot, as a matter of law, establish either of the first two exceptions to the law of the case doctrine in this appeal. Since this Court did not remand for a new trial or allow new evidence to be proffered—except relating to Appellees' request for attorneys' fees, E1018, the first exception is patently inapplicable. Similarly, the second exception is inapplicable since the Supreme Court of Maryland did not issue any conflicting precedent after this Court issued its May 26, 2023 Opinion in this case.

Alluding to the third exception, Appellants suggest that this Court's decision to affirm the injunction as to Parcels 2 and 3 is clearly erroneous because it is "undisputed" that Parcels 2 and 3 are burdened by a public road. Holder Br. at 22; UEBP Br. at 10 (2nd question presented stating that public roads "undisputedly" cross Parcel 2 and 3). This allegedly undisputed evidence includes (a) a Comprehensive Plan depicting a road in the "vicinity" of the Young Property; (b) a town resolution describing a street that "ran southeast from Main Street parallel to the railroad" and naming it Harris Road; (c) a copy

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Mr. Young some waived his right to challenge this claim, Holder Br. at 22-23, 29, Appellants are being deliberately obtuse.

of a page from a 1936 Washington County Road Atlas that purports to depict a road near the Young Property; (d) a book written by a local historian about local roads; and (e) a letter from the County Attorney purportedly acknowledging the existence of a public road. Holder Br. at 3-11.

This Court's decision to affirm the injunction as to Parcels 2 and 3 (in the last appeal) despite Appellants' "evidence" of a public road was not clearly erroneous. In Maryland, public roads are established by: (1) public authority, (2) dedication, or (3) prescriptive easement. Bd. of Cnty. Commissioners of St. Mary's Cnty. v. Aiken, 483 Md. 590, 623–24, 296 A.3d 933, 953 (2023). None of these apply to the evidence proffered by Appellants for the second time on this appeal.

First, there is no evidence that any public authority acquired a public road across Mr. Young's property by eminent domain. In order to take property by eminent domain, the government must initiate condemnation proceedings. Md. Ann. Code, Real Prop. Art. 12 (describing current rules for exercising eminent domain); Wilkinson v. Bd. of Cnty. Commissioners of St. Mary's Cnty., 255 Md. App. 213, 246, 279 A.3d 1052, 1073, cert. granted sub nom. Bd. of Cnty. Commissioners of St. Mary's Cnty., Maryland v. Aiken, 482 Md. 143, 285 A.3d 849 (2022), and aff'd sub nom. Bd. of Cnty. Commissioners of St. Mary's Cnty. v. Aiken, 483 Md. 590, 296 A.3d 933 (2023); State ex rel. McClellan v. Graves, 19 Md. 351, 369–70 (1863) (indicating that, even in 1863, government had to exercise eminent domain "in a prescribed form" and pursuant to proceedings of a "legal character"). Here, Appellants identified no evidence that a public authority initiated condemnation proceedings, e.g. by proffering a copy of a complaint to condemn filed in

court. At most, the comprehensive PLAN cited, but never produced,[3] by Appellants establishes only a prospective interest in exercising eminent domain over one more unidentified properties; it does not establish that condemnation proceedings were initiated.

Second, none of the evidence proffered by Appellants establishes the existence of a public road created by prescription over the Young Property. A public road "may be established by evidence of an uninterrupted user by the public for twenty years; the presumption being that such long continued use and enjoyment by the public of such way had a legal rather than an illegal origin." Wilkinson, 255 Md. App. at 246, 279 A.3d at 1073. However, for a right of way to acquire status as a prescriptive road open to the public at large, as opposed to a prescriptive easement open only to particular property owners, the right of way must have a terminus at a public place. Easter v. Overlea Land Co. of Baltimore Cty., 129 Md. 627, 99 A. 893, 895 (1917); Layman v. Gnegy, 26 Md. App. 114, 117, 337 A.2d 126, 128 (1975) ("Obviously the use of the road as access to the Coddington Farm by the owners and visitors to that property was not a public use"); O'Brecht v. State, 145 Md. 171, 125 A. 539, 541 (1924); Mayor & Town Council of New Mkt. v. Armstrong, 42 Md. App. 227, 237–38, 400 A.2d 425, 431–32 (1979).

Here Appellants failed to identify any evidence capable of establishing a public road by prescription. Mr. Young testified that the wagon road was not used after he bought the property in 1988. E1135-1138.

[3] Appellants referenced this comprehensive plan in its Second Amended Answer but did not attach it to the pleading. E1072.

Mr. Holder's wife also admitted that when she purchased her nearby property in 2018 the wagon road was abandoned. Appx. 227-228. The only person who testified about use of the wagon road was Mr. Holder, who claimed that he rode bicycles and dirt bikes on the wagon road when he was child. Appx. 118-123. This certainly did not amount to an open and notorious use sufficient to establish a prescriptive road or easement. Ms. Holder confirmed that other children did not openly use the wagon road as her parents forbade her from trespassing in the area. Appx. at 123.

Furthermore, there is no evidence that the wagon road went to a public place. Instead, the evidence establishes that the wagon road was originally created as a private easement intended to provide only the UEBP and Deena Holder Properties access to what is now Dogstreet road. Compare App 3 with Pennsylvania R. Co. v. Breeden, 154 Md. 91, 140 A. 82, 85 (1928) ("The mere fact that a private way is subsequently used by the public without objection from the owner will not convert it into a public way"). This is not a public use sufficient to create a public road. In any event, that right of way is now obsolete since UEBP and Deena Holder access their properties via Antietam Drive. E1187, 1213. In light of all of this evidence, this Court's holding in the first Opinion that Appellants failed to establish a public road by prescription was NOT clearly erroneous. E1177-1178.

Third, there is no evidence that a public road was created on the Young Property by dedication. "[A]n owner may not be deprived of his interest by dedication unless there has been some clear and decisive act indicating a desire to dedicate land to public use." Washington Land Co. v. Potomac Ridge Dev. Corp., 137 Md. App. 33, 41, 767 A.2d 891,

895 (2001). Usually, a dedication is accomplished by the owner's recordation of a deed or plat. Bd. of Cnty. Commissioners of St. Mary's Cnty. v. Aiken, 483 Md. 590, 625–26, 296 A.3d 933, 954 (2023) ("The offers are generally, although not exclusively, made by showing roads, parks or similar facilities on plats without any limitations on dedication, and the recording of those plats"); Wilkinson, 255 Md. App. at 249, 279 A.3d at 1074 ("when a plat is recorded, it is [generally] presumed that there is an intent to dedicate particular types of land interests to public use, such as roads, parks, etc.").

Furthermore, an offer to dedicate is not complete unless it is accepted; "an offer to dedicate is generally accepted by one of the four following methods: 'acceptance of a deed or other record; acts in pais, such as grading, at public expense; long use; or express statutory or other official action.'" Wilkinson v. Bd. of Cnty. Commissioners of St. Mary's Cnty., 255 Md. App. at 248–49, 279 A.3d at 1074 ("Acceptance may occur when the 'appropriate entity assum[es] control and maintenance of the property offered'"); Bd. of Cnty. Commissioners of St. Mary's Cnty. v. Aiken, 483 Md. 590, 625–26, 296 A.3d 933, 954 (2023). A dedication to public use, however, does not have to be accepted by a governmental authority; it may also be accepted by the public at large through use. Wilkinson, 255 Md. App. at 248–49, 279 A.3d at 1074 (emphasis added). A public road created by public use, however, is not a government road. Wilkinson, 255 Md. App. at 253, n.13, 279 A.3d at 1077 n.13 ("the mere fact that the public may have used a way over private property for many years is not sufficient to raise the presumption that the way has been accepted by the public authorities as a public street").

Here there is no evidence that Mr. Young or his predecessors in title ever dedicated a street across the Young Property for public use. Although Appellants identify several documents that mention public roads in the vicinity of the Young Property, e.g. the 1932 Atlas, historical book, comprehensive plan, attorney letter and meeting minutes, there is no evidence that anyone in the chain of title to the Young Property knew about those documents, let alone expressed a "clear and decisive" intent to assent to the public use of any roads depicted therein. The evidence of dedication is so sparse that Appellants do not even raise an argument as to dedication in their briefs. See generally UEBP and Holder Brs.; UEBP Br. at Appx h (including a single reference to dedication in the statutory appendix for an unrelated purpose).

UEBP also suggests that Parcel 2 is burdened by a public road because Mr. Young acknowledged the existence of a road in his testimony. UEBP Br. at 18, 19, 25. In fact, Mr. Young only admitted that Parcel 2 was burdened by Dogstreet Road at trial. E86-89; see also Appx. 124-129 (Mr. Young Dedicating a portion of Parcel 2 to facilitate only Dogstreet Road). Appellants, however, should not be allowed to twist Mr. Young's acknowledgement that his property fronted on Dogstreet Road into an admission that the wagon road crossed Parcels 2 and 3 of the Young Property. Appellants' argument is a non sequitar.[4]

[4] It is inappropriate for Appellants to argue on this appeal that Parcel 2 is burdened by a public road when they disclaimed the existence of any such public road during trial before the first appeal. Indeed, the trial court recognized that "Such claim [to Parcel 2] was abandoned at or before trial." E1189. Appellants did not challenge that decision on the last appeal and should not be allowed to do so now.

Appellants also failed to proffer evidence that the Town of Keedysville accepted a dedication of a public road across the Young Property. For the government to impliedly accept a dedication, the public authority has to expend some resources to develop or maintain the road, e.g. grading, paving, filling of potholes or plowing. Here, there is NO evidence that the Town of Keedysville (or any other public authority) ever exerted control over or requisitioned funds for the maintenance of any road over the Young Property. Although the Town of Keedysville may have named it streets in 1961, that fact does not establish that the town accepted ownership of the road; rather, the resolution appears related to the facilitation of the mail rather than for road purposes. Appx. 129 ("Now that the streets are named, Brandenburg and Kline have to figure out a way to number the houses").

Even if the naming of a road could, under some circumstances, sufficiently establish the implied acceptance of a dedication, it could not do so here because the evidence did not establish with any precision that any of the roads therein crossed the Young Property. For example, Harris Lane is described as "running southeast from Main St. parallel to the railroad tracks." However, the article does not describe the length of the road or even imply that it extended to the Young Property. Although Appellants produced a plat in discovery showing that another property owner near main street dedicated property for the use of Harris Lane, Appx. 130, Appellants failed to produce a

similar plat recorded by Mr. Young's predecessors expressing a similar intent for the Young Property.[5]

Appellants' claim to a public road is further contradicted by the undisputed evidence the wagon road was long ago abandoned, assuming it was ever a public road in the first place. Mr. Holder's wife admitted that the road was abandoned. Appx. 227-228; Even the book proffered by Mr. Holder establishes the likelihood that use of the old wagon road was abandoned: "Where roads are mentioned, they should be viewed in a very general sense. In some case, as demonstrated, the same roadbed may still be in use from the earliest days, but most are over slightly altered courses." E1379. Since there is no evidence that the wagon road has been used during the lifetime of the litigants by the public at large (or even by individual property owners), the wagon road has never been maintained according to current municipal practices, e.g. paving and installation of road signs, the remnants of the road are barely visible, and it is obsolete because there is a more direct route to the UEBP Property, the evidence indisputably establishes that the wagon road was abandoned as a public road assuming it ever was one. Baldwin v. Trimble, 85 Md. 396, 37 A. 176, 178–79 (1897); Browne v. Trustees of Methodist

[5] The other documents relied upon by Appellants are similarly defective. E1364, 1368-1428. Although Appellants suggest that they have identified public roads in the vicinity of the Young Property, they do not identify the location of such roads with sufficient precision to place it on the Young Property. Appellants' failure to hire a surveyor to testify about the locatin of the Road in the Atlas rendered the claim fatally defective. Compare E1060 (Mr. Holder's amended answer referencing Atlas) with Rule 5-803(b)(18) (requiring expert testimony before admitting treatises or other books concerning subjects of history).

Episcopal Church in City of Baltimore, 37 Md. 108 (1872); Board of County Commissioners of St. Mary's County v. Aiken, 483 Md. 590 (2023).

Appellants suggested in the last appeal that the town's abandonment of the public road over the Young Property amounted to a violation of the public trust. Appx 25-26. In support thereof, UEBP cited to Perrellis v. Mayor and City Council of Baltimore, 190 Md. 86, 57 A.2d 341 (1948). Id. Appellants, however, do not cite to Perellis in this appeal because they are taking an entirely different approach. Instead of arguing that the town wrongfully closed the wagon road in breach of Perellis, Appellants now argue that the wagon road was never formally closed by the town and, therefore, must be still open. Appellants, then reason that since the wagon road is still open, this Court should lift the injunction so Mr. Holder can skulk around the Young Property until such time as Mr. Young successfully convinces the Town of Keedysville to close the road. Holder Br. at 26.

Appellants' attempt to shift the burden of proof to Mr. Young, however, has been waived. In the trial court, Mr. Holder admitted that any roads over the Young Property were closed, inactive, and unused:

> In this litigation, and in other litigation in this court, Defendant Justin Holder has asserted that certain closed or unopened public roads exist on Plaintiffs land and that Mr. Holder is entitled to sue Plaintiff, and other private citizens, to have them opened. This issue was not considered during trial because the court made a preliminary determination that Mr. Holder cannot sue another private citizen to compel government to open an abandoned, unused, closed, or otherwise unopened road.

E1210. Appellants cannot argue in the first appeal that the wagon road was wrongfully closed, lose on that argument, and then argue in this appeal that the wagon road is still open and that Mr. Young has the burden to seek closure; if this Court were to allow Appellants to reverse course so freely the purpose of the law of the case doctrine would be defeated. If Appellants wanted to frame the issue in this way, they should have done so in the trial court and/or addressed this issue in the first appeal. Williams v. Banks, 19 Md. 22, 26 (1862) ("It is too late to plead the statute of limitations to a claim for the first time after it has been passed upon by the court of appeals, and the cause remanded"). This is particularly true, here, where this Court did not authorize Appellants to reframe the public road issue on remand.[6] Amabile v. Winkles, 34 Md. App. 435, 437, 367 A.2d 58, 59 (1977) (on remand, trial court should limit issues to those presented by mandate); Bacon v. Arey, 203 Md. App. 606, 670, 40 A.3d 435, 473–74 (2012) (Appellants may not litigate new issues which were not authorized by the Mandate).

Nor should this court allow Appellants to revive its Perrellis argument in this appeal. In Perellis, the City of Baltimore instituted condemnation proceedings pursuant

[6] For this reason, Appellants' inverse condemnation claim is raised too late. UEBP Br. at 21-28 (Litz v. Maryland Dep't of Env't, 446 Md. 254, 267, 131 A.3d 923, 930 (2016)). Appellants cannot argue that the Town is actively in the process of taking their property by closing the wagon road, when Appellants previously took the position that the road was closed long before they acquired their properties. In any event, Appellants' taking claim is fatally defective. In order for a road closure to amount to a taking, it has to completely deny the owner of property access to his property. Maryland Reclamation Assocs., Inc. v. Harford Cnty., 468 Md. 339, 388, 227 A.3d 230, 259 (2020); That is not the case here where UEBP can access its property over Antietam Drive without ever using the Wagon Road. E1187, 1213.

to which the City sought to convey a portion of Benefit Street to a private individual (so he could build a store in its place) in exchange for a parcel of property on which the City could construct an alternative street. Since the proposal would eliminate the most direct route of traffic to nearby properties, i.e. through Benefit Street, the inconvenienced property owners objected. The Court of Appeals agreed, finding that the use of a condemnation proceeding amounted to an unconstitutional taking of land for a private purpose. In support thereof, the court noted not only that the proposed taking solely benefited the prospective store owner (as opposed to the public at large), but that the proposed alternative street would impede traffic for the public at large.

The holding in Perellis is inapplicable here. Unlike the City of Baltimore in Perellis, the Town of Keedysville did not utilize its powers of eminent domain to "take" any property. In fact, the Town did not even take any action whatsoever to close the wagon road. To the extent that the wagon road was "closed", it was through the lack of public use—not formal government action. Without any action by the Town of Keedysville to close the road, the Takings Clause was not implicated. Love Terminal Partners, L.P. v. United States, 889 F.3d 1331, 1341 (Fed. Cir. 2018) (government inaction cannot be the basis for takings liability). Thus the prior panel was not clearly erroneous when it rejected the application of the Perillis case to the facts of this case.

Importantly, the Court of Appeals acknowledged that the wrongdoing in Petrellis did not arise from the closure of the road; indeed, that court explained that the City had almost unfettered discretion to close a public road even if it inconvenienced property owners. Krebs v. Uhl, 160 Md. 584, 154 A. 131, 134 (1931)). Instead, the wrongdoing

arose from the acquisition of the replacement land to serve a private purpose, i.e. to support the construction of a store for private gain. Since the abandonment of the wagon road by the public at large in the case sub judice was not coupled with the taking of any private land by a public authority (for any purpose—public or private), the Takings Clause applied in Petrellis was not implicated here.[7]

In fact, it is not surprising that the Town of Keedysville took no action to close the wagon road here since there is no evidence that the Wagon Road was ever a TOWN road. In coming to this conclusion, it is important to understand the distinction that not all public roads are government roads; although a public road may be created by prescription, that prescriptive road is not a government road unless a public authority expressly or implied accepts control over it by recorded document or maintenance. McGarry v. Scott, 2003-NMSC-016, 134 N.M. 32, 72 P.3d 608 ("Requirement of Subdivision Act that counties formally accept road maintenance before becoming obligated to provide road maintenance in subdivisions was not satisfied by common law doctrines of prescriptive easement or implied dedication, even assuming such doctrines resulted in a public right of way"). Thus, just because there is a road referenced in the vicinity of the Young Property in a 1932 Atlas, does not mean that the Town of

[7] UEBP argues that property interests were "taken" by the closure of the wagon road. UEBP Br. at 25. Maryland law, however, is clear, that the closure of a road only amounts to taking if the closure landlocks a property. Krebs v. Uhl, 160 Md. 584, 154 A. 131, 134 (1931) (road closure implicates taking when it "has left abutting property practically deprived of access"); Wayne Watson Enterprises, LLC v. City of Cambridge, 243 F. Supp. 3d 908, 917 (S.D. Ohio 2017). Since UEBP has access to its property from Antietam Drive this narrow claim for Taking is inapplicable. E1187, 1213.